

Sellers of personalized business calling cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are engaged in a service occupation in producing or procuring custom-ordered items that have no commercial value to others. If the items produced, however, have intrinsic usefulness and so have commercial value to persons other than the customer, they are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.1995. (This is a GIL).

December 30, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 15, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Our company is a distributor of promotional products. We buy from manufacturers throughout the United States and ship to clients in Illinois and other states.

To sell our products, we buy catalogs with our COMPANY imprint as sampled by the enclosed TITLE catalog to give to our prospects and clients in and out of Illinois. Sometimes we also have to buy a quantity of catalogs without our name printed as sampled by the NAME catalog enclosed. Are these catalogs subject to tax? If so, what rate?

In addition to catalogs, we purchase samples with our imprint such as the enclosed \$100 zippy letter opener. We give these to clients and in some instances, mail them out bulk both to Illinois and out of state prospects and clients. We do not bill clients/prospects for these types of samples. They are given freely for demonstration purposes in the hopes that an order will result. Are these samples taxable? What rate?

In other cases, we order specific samples for client presentation. We present sample to client. The client doesn't like the product and our supplier has a 'no-return sample policy'. Are we liable to pay tax on this sample? The sample is of no use to us but we cannot return it and the client can't be billed for it. Is this type of sample taxable? What rate?

Since we have no use for these samples, we usually donate such samples to a charitable organization at the end of the year. What about the tax liability in this instance?

Please clarify in writing what a firm like ours is liable for.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition).

Please find enclosed a copy of 86 Ill. Adm. Code 130.1995 concerning Personalizing Tangible Personal Property. Sellers of personalized business calling cards, letterheads, envelopes, labels, name plates, badges, medallions and the like do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are engaged in a service occupation in producing or procuring custom-ordered items that have no commercial value to others. If the items produced, however, have intrinsic usefulness and so have commercial value to persons other than the customer, they are subject to Retailers' Occupation Tax. As a general rule, when a product is an item of general utility and serves substantially the same function as a stock or standard item, the product will be subject to the Retailers' Occupation Tax when sold. Items that serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price. The Retailers' Occupation Tax is imposed upon 100% of the selling price of tangible personal property.

When a company produces customized materials for a purchaser, it acts as a serviceman and incurs either Service Occupation Tax liability or Use Tax liability on the sales of personalized business products to his service customers. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is based on the separately stated selling price of the tangible personal property

transferred. If the servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. These servicemen collect Service Use Tax from their customers and provide Certificates of Resale to their suppliers.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Serviceman may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to the sale of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. They collect Service Use Tax from their customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customer nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

A donor who purchases tangible personal property and gives the tangible personal property to a donee makes a taxable use of the property when making the gift. See the enclosed copy of 86 Ill. Adm. Code 150.305. A donor owes Use Tax on the donor's cost price of the tangible personal property when the gift is donated in Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.